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PRODUCTIONS CO. LTD.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

UM CORPORATION, a Japanese
corporation,

Plaintiff,

vs.

TSUBURAYA PRODUCTIONS CO.
LTD., a Japanese corporation,

Defendant.

CASE NO. 2:15-cv-03764-AB-AJW

**DECLARATION OF LLOYD W.
CUNNINGHAM IN SUPPORT OF
DEFENDANT AND
COUNTERCLAIMANT
TSUBURAYA PRODUCTIONS CO.
LTD.'S OPPOSITION TO UMC'S
MOTION FOR JUDGMENT ON
THE PLEADINGS OR, IN THE
ALTERNATIVE, FOR SUMMARY
JUDGMENT**

TSUBURAYA PRODUCTIONS CO.
LTD., a Japanese corporation,

Counterclaimant,

vs.

UM CORPORATION, a Japanese
corporation; ULTRAMAN USA, INC.,
a California corporation; SOMPOTE
SAENGDUENCHAI, a Thai individual;
GOLDEN MEDIA GROUP, INC., a
California corporation; TIGA
ENTERTAINMENT COMPANY,
LTD., a Hong Kong corporation; and
DOES 1-10,

Counterdefendants.

Hearing Date: September 12, 2016

Judge: Hon. André Birotte, Jr.

Trial Date: August 22, 2017

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DECLARATION OF LLOYD W. CUNNINGHAM

I, Lloyd W. Cunningham, declare as follows:

1. I am currently self-employed as a Forensic Document Examiner and as a consultant in that field. Attached hereto as **Exhibit A** is my Curriculum Vitae. My experience in the field of forensic document examination includes the examination and comparison of questioned and known signatures, specifically the detection of simulated signatures. I have presented numerous forensic workshops that deal with simulated signatures which were accredited by the American Board of Forensic Document Examiners, Inc., which is the certifying board for forensic document examiners in the USA, Canada and Australia. The most recent workshops for simulated signatures that I presented were for the joint seminar of the American Society of Questioned Document Examiners and the Australasian Society of Forensic Document Examiners which was held in Honolulu, HI in 2014, the American Society of Questioned Document Examiners seminar which was held in Toronto, Canada in 2015, and the Australasian Society of Forensic Document Examiners seminar which was held in Sydney, Australia in 2016.

2. I was retained in the matter of UM Corporation v. Tsuburaya Productions Co. Ltd., No. 2:15-cv-03764-AB-AJW by the Quinn-Emanuel Law Firm for the purpose of examining questioned and known "Noboru Tsuburaya" signatures in order to determine if the questioned signature is genuine or non-genuine.

3. Attorney Daniel C. Posner of the Quinn-Emanuel Law Firm provided me with a color machine-copy of a March 4, 1976 Agreement between Tsuburaya Productions Co., Ltd and Sompote Saengduenchai which exhibits a questioned "Noboru Tsuburaya" signature, a copy of which is attached hereto as **Exhibit B**. In addition, two additional color copies of this document both bates stamped UMC0000092, and one black and white copy of the document were also submitted for examination, copies of which are collectively attached hereto as **Exhibit C**.

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1 4. Attorney Posner also submitted to me for examination the following
2 machine-copies of documents that bear the purported known exemplar signatures of
3 Noboru Tsuburaya, copies of which are attached, in the following order, as **Exhibit**
4 **D**:

- 5 • July 15, 1970 Agreement between Tsuburaya Enterprise and
6 Prasertchai Co., Ltd.;
- 7 • November 11, 1973 Invoice of Tsuburaya Enterprise;
- 8 • November 26, 1973 Agreement between Tsuburaya Production and
9 Thai Burin Film Co., Ltd.;
- 10 • September 3, 1974 Agreement between Tsuburaya Production and
11 Chaiyo Film Co., Ltd.;
- 12 • March 7, 1974 Invoice of Tsuburaya Enterprise;
- 13 • October 10, 1974 Agreement between Hu Long Co., Ltd. and Thai
14 Burin Film;
- 15 • June 7, 1975 Invoices of Tsuburaya Enterprise (two signatures);
- 16 • June 16, 1975 Packing Lists of Tsuburaya Enterprise (two signatures);
- 17 • January 4, 1976 Agreement between Tsuburaya Enterprise and
18 Commercial Television, Ltd.;
- 19 • July 7, 1976 Agreement between Tsuburaya Production and
20 Rankin/Bass Productions Inc. (two signatures);
- 21 • August 16, 1976 Agreement between Tsuburaya Enterprise and
22 Commercial Television;
- 23 • August 24, 1976 Letter between Tsuburaya Production and
24 Rankin/Bass;
- 25 • August 27, 1976 Letter between Tsuburaya Production and
26 Rankin/Bass;
- 27 • October 28, 1976 Agreement between Tsuburaya Enterprise and
28 Commercial television;

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- December 1, 1976 Agreement between Tsuburaya Production and Rankin/Bass (two signatures);
- December 1, 1976 Escrow Agreement between Tsuburaya Production and Rankin/Bass (two signatures);
- December 1, 1976 Agreement between Tsuburaya Production and Rankin/Bass (two signatures);
- January 27, 1977 Agreement between Tsuburaya Enterprise and Commercial Television;
- May 19, 1977 Letter between Tsuburaya Enterprise and Rankin/Bass;
- March 6, 1978 Letter of Authorization between Tsuburaya Enterprise and Apollo Films;
- January 1, 1981 Agreement between Tsuburaya Enterprise and Telefilms;
- March 10, 1984 Agreement between Tsuburaya Enterprise and Sompote;
- September 1, 1988 Agreement between Tsuburaya USA, Inc. and European Broadcast Corporation B.V.; and a
- September 20, 1989 Agreement between Tsuburaya Productions and The South Australian Film Corporation.

5. There are limitations when examining machine-copies; therefore, it is assumed for the purpose of this report that the evidence relevant to my opinions is accurately reproduced in the submitted machine-copies. Opinions and observations set forth hereafter are subject to review if the originals can be produced for examination.

6. The nature of the **Exhibit B** Agreement color-copy will permit observation of the formations of the letters, the height relationship between the letters, the internal spacing (counter) of the individual letter forms, the spacing between the letters, and some fine and subtle elements of the letters and connecting strokes, which provides a good pictorial image of the questioned signature.

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1 However, there are elements of the questioned signature that cannot be thoroughly
2 observed and evaluated such as the pen pressure (point load), sporadic heavier
3 deposits of ink (ink gooping), and subtle pen lifts and subtle hesitations.

4 7. It is my opinion that the **Exhibit B** questioned Noboru Tsuburaya
5 signature is not the normal or genuine signature of Noboru Tsuburaya when
6 compared with his **Exhibit D** exemplar signatures.

7 8. The basis and reasons for my opinion are as follows:

- 8 • The science of handwriting identification relies upon the fact that no
9 two persons share the same combination of handwriting characteristics,
10 and that frequent repetitions of the writing act by one individual,
11 particularly when writing his signature, establishes habit patterns that
12 are difficult, if not impossible to imitate successfully by another.
- 13 • Two handwritings can be deemed to be the writing of one and the same
14 individual only when they agree in every fundamental element and
15 quality, and if they embody no basic differences. Conversely, if two
16 writings contain significant differences in basic characteristics that
17 cannot be reasonably accounted for then an opinion of common
18 authorship cannot be reached.
- 19 • It is also necessary to consider that no person writing freely and
20 normally ever writes his signature in precisely the same way twice,
21 which is referred to as normal variation in handwriting. These
22 variations are grouped around the master pattern of the signature and
23 are not considered as fundamental differences.
- 24 • Writing can be identified with its author if it reflects the writing habits
25 of its author in adequate kind and number, and when it can be
26 compared and evaluated in connection with adequate writing exemplars
27 by that author.
- 28 • In this matter there are a substantial number of known exemplar
signatures from Noboru Tsuburaya that are directly comparable to the
Exhibit B questioned signature. The exemplar signatures were written
during the normal course of business and on various dates that bracket
the date of the questioned signature; and they are quantitatively
adequate for a thorough comparative analysis. I have cross-compared
these exemplar signatures and within a limited range of variations I find

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1 them to be internally consistent. They are, in my opinion,
2 representative of his basic signature style and writing habits.

- 3 • There is some pictorial resemblance between the **Exhibit B** questioned
4 Noboru Tsuburaya signature and his **Exhibit D** exemplar signatures;
5 however, any real similarity ends there. In my opinion there was a
6 feeble attempt to copy and imitate the genuine signature of Noboru
7 Tsuburaya. The individual responsible for the attempted imitation
8 employed very standard techniques that are commonly found in
9 imitated signatures executed by an amateur; that is, the lay person
10 generally only concentrates on the most obvious characteristics of the
11 genuine (model) signature and fails to recognize the fine and subtle
12 elements of the genuine signature. In this matter the perpetrator
13 apparently concentrated on the uppercase “N” and the lowercase “b” in
14 Noboru, the uppercase “T,” lowercase “s” and lowercase “b” in
15 Tsuburaya. However, the attempted imitation of the aforementioned
16 letters was unsuccessful because the perpetrator failed to execute them
17 correctly. The remaining letters in the questioned signature do not
18 remotely resemble the corresponding letters in the genuine exemplar
19 signatures; rather, they may reflect some of the normal handwriting
20 habits of the perpetrator.

21 9. The fundamental differences between the questioned and known
22 signatures include, but are not limited to, the following:

- 23 • Uppercase “N”: The introductory loop is short and flat on the left side.
24 The height relationship between the first and second hump. The
25 outward bow of the right side. The angular connecting stroke to the
26 “o.”
- 27 • Lowercase “o”: The angle of the loop at the top.
- 28 • Lowercase “b”: The shape and angle of the loop above the bowl. The
angularity of the bottom of the bowl.
- Lowercase “r”: The flat/angular shape at the top and the tight curvature
at the right-bottom corner.
- Uppercase “T”: The shape and stroke direction of the top cross-bar.
The bottom of the “T” that extends to the left. The curvature of the
staff “vertical” stroke.

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- Lowercase “s”: The curvature of the right side. The spacing between the “s” and the “u.”
- Lowercase “u”: It appears that there is a pen-lift at the top-left side of the first “u.”
- Lowercase “b”: The shape of the bowl and the shape of the loop at the top of the bowl.
- Lowercase “r”: The connecting stroke between the “u” and “r.” The flat/angular shape of the top and the tight curvature at the right-bottom.
- Lowercase “a”: The cursive style of “a” versus the manuscript style of “a” in the known exemplar signatures.
- Lowercase “y”: The shape of the bowl. The shape and direction of the descending stroke.
- The speed and rhythm throughout the questioned signature is different.

10. Attached collectively as **Exhibit E** are two demonstrative charts which depict the aforementioned differences between the questioned and known signatures. These differences strongly point to the simulation of Noboru Tsuburaya’s signature by an individual possessing quite different writing habits than Noboru Tsuburaya.

11. The USA Federal Government created a committee, The Scientific Working Group for Document Examination “SWGDOC,” to write suggested guidelines for the Examination of Handwritten Items. Part of the suggested guidelines deals with the “Opinions Expressed by Forensic Document Examiners,” which describe a hierarchy of the strength of the opinion expressed by the document examiner. The following is a brief description of the suggested guidelines:

1. Identification “did write” (positive) is the strongest “did write” opinion rendered.
2. Highly Probable “did write” equates to “virtually certain.”
3. Probably “did write.”
4. Indications “did write” which is a weak opinion generally used as an investigative lead.

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- 1 5. No Conclusion.
- 2 6. Indications "did not write."
- 3 7. Probably "did not write."
- 4 8. Highly Probable "did not write" equates to "virtually certain."
- 5 9. Positive Elimination "did not write" (positive) is the strongest "did not
- 6 write" opinion rendered.

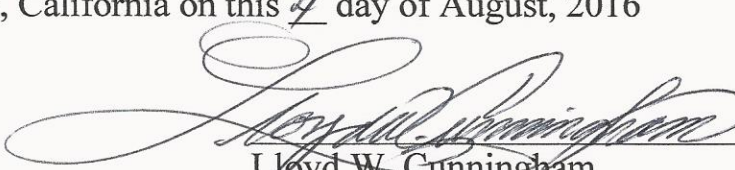
7 In this matter it is my opinion that the **Exhibit B** questioned Noboru
8 Tsuburaya is "positively" not the normal or genuine signature of Noboru Tsuburaya
9 and that the questioned signature is the product of simulation.

10 12. In addition to my observations about the questioned Noboru Tsuburaya
11 signature, I observed that the **Exhibit B** questioned document was prepared on
12 stationery that bears TSUBURAYA ENTERPRISE CO., LTD. letterhead, and the
13 typewritten signature block format exhibited on the **Exhibit B** questioned document
14 is quite different than the signature block format that is present on other fairly
15 contemporaneous known documents which were also prepared on stationery with
16 TSUBURAYA ENTERPRISE CO., LTD. letterhead.

17 13. I also observed that the typewritten words "prod.and" that appear at the
18 end of the first line in paragraph no. 1 and at the end of the third line in the last
19 paragraph of **Exhibit B** are not in vertical or horizontal alignment with the
20 remaining typewritten text. Therefore, they were inserted after the main body of
21 typewritten text was prepared.

22 I declare under penalty of perjury under the laws of the State of California
23 that the foregoing is true and correct.

24 Executed at Alamo, California on this 4th day of August, 2016

25 
26 Lloyd W. Cunningham